

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

John Byrd,) Civil Action No. 8:05-cv-2069-HMH-BHH
Plaintiff,)
vs.) **REPORT OF MAGISTRATE JUDGE**
John Ozmint, Director SC Dept. of)
Corrections,)
Defendants.)

)

The plaintiff is proceeding in this action *pro se*. He is seeking relief pursuant to Title 42, United States Code, Section 1983. On November 29, 2005, the defendant Jonathan Ozmint filed a motion for summary judgment. On November 30, 2005, pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the summary judgment procedure and the possible consequences if he failed to respond adequately. Despite this explanation, the plaintiff elected not to respond to the motion.

As the plaintiff is proceeding *pro se*, the court filed a second order on January 18, 2006, giving the plaintiff through February 10, 2006, to file his response to the motion for summary judgment. The plaintiff was specifically advised that if he failed to respond, this action would be dismissed for failure to prosecute. The plaintiff elected not to respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed for lack of prosecution pursuant to Rule 41(b) of the Federal Rules of Civil Procedure and the factors outlined in *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.1982). See *Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989).

s/Bruce H. Hendricks
United States Magistrate Judge

June 16, 2006
Greenville, South Carolina